April 9th, 2007

Commission's Secretary
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Deena Shetler: deena.shetler@fcc.gov
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Re: WC Docket No. 06-210
CCB/CPD 96-20

Ex-Parte Comments of
800 Discounts, Inc. Winback & Conserve Program. Inc,
Group Discounts, Inc., and One Stop Financial, Inc

The following email was sent to AT&T and has been confirmed as received from two of its counsels. It confirms that petitioners and other public commenters are notifying the FCC that no further comments will be sent the FCC on the traffic only transfer unless AT&T attempts to cover-up its concession.

----- Original Message -----
From: Mr. Inga
To: anthony.delaurentis@fcc.gov ; sandra.gray-fields@fcc.gov ; Deena Shetler ; Frank Arleo ; fcc@bcpiweb.com ; Guerra, Joseph R. ; Brown, Richard ; lgsjr@usa.net ; phillo@giantpackage.com ; Joe Kearney
Sent: Monday, April 09, 2007 2:14 PM
Subject: Closing of Public Comments on traffic only transfer issue.

Dear FCC, AT&T, and Public Commenter's

Mr. Shipp, Mr. Kearney, Mr. Okin and petitioners have no additional comments to add to the FCC 06-210 case unless AT&T attempts to cover up AT&T's concession petitioners evidenced last week within AT&T's November 1995 briefs to the District Court-- for which the DC Circuit did not have available to it.

AT&T's position is that **under the tariff** CCI's plan obligations do not transfer to PSE. This is of course in agreement with the FCC's 2003 decision and petitioners position.

AT&T's concession now answers Judge Bassler's question regarding which obligations transfer on the traffic only transfer at hand.

Therefore, petitioners and the other public commenter's are now jointly notifying the FCC that we have no further information to add and petitioners will upload this FCC notification as notice that comments are closed on this issue and for the FCC to issue 203(c) violation on the traffic only transfer issue.

The traffic only transfer issue is now finalized in petitioners favor.

Al Inga
800 Discounts. Inc.

END OF EMAIL

Judge Bassler's Error in Reading FCC's 2003 Decision

Petitioners also would like to point out a critical error Judge Bassler made when reading the FCC's 2003 decision that petitioners did not notice after Judge Bassler's retirement.

Judge Bassler 6/1/06 Decision page 14 footnote 5

> Plaintiffs argue that the FCC already addressed whether shortfall and termination obligations were to be assumed by PSE.Pls. Mem. at 11-12. **The FCC "only" discussed shortfall and termination charges in the context of the fraudulent use provision, § 2.2.4, in Tariff No. 2.**

The FCC **Did Not** ***Only*** discuss shortfall and termination charges in the context of the fraudulent use provision, § 2.2.4, in Tariff No. 2. The FCC Absolutely Determined What Obligations Are Transferred Under Section 2.1.8 not the Fraudulent Use Provision 2.2.4

Judge Bassler obviously made a critical error because the following excerpt from the FCC Decision clearly shows that the FCC's interpretation and decision regarding the allocation of obligations was indeed interpreted using the obligations language under heading 2.1.8. The error that Judge Bassler made was that he looked at the FCC decision and he mistakenly believed the following excerpt was under the FCC Decisions Fraudulent Use heading, when it was in fact under the heading: **2.1.8**

FCC Decision (Exhibit B in petitioners initial filing) Page 7 line 10:

FCC Decision Under Heading 2.1.8

CCI and PSE retained the benefits and obligations of their respective agreements with AT&T. We note in this regard that both the forms submitted to AT&T and the agreement between CCI and PSE stated that CCI would continue to subscribe to its existing CSTP II plans. **[FCC FOOTNOTE 49 HERE]** Thus, **CCI still would have to meet its tariffed commitments**, without the use of the traffic moved to PSE, and **AT&T also would remain obligated to CCI under the terms of Tariff No. 2**. **[FCC FOOTNOTE 50 HERE]** The moved traffic would be used to meet PSE's CT 516 volume commitments and, once moved, would no longer be associated with CCI's CSTP II. If the traffic were moved away from CCI under Tariff 2, to PSE under Contract Tariff 516, AT&T would get less money for the same traffic – the traffic would be discounted 66 percent instead of 28 percent. **[FCC FOOTNOTE 51 HERE]**

FOOTNOTE 49:

See Exhibits G and H to Petition.

FOOTNOTE 50:

CCI and PSE did agree that the traffic could be returned to CCI upon 30 days written notice from CCI that **AT&T required CCI to meet its commitments**. *See* Exhibit G to Petition. Accordingly, at least theoretically, the traffic might have been returned to CCI at some point to **enable it to meet any CSTP II obligations**. *Cf.* Reply at 10 (arguing CCI would receive more net income, and thus have more money available to pay any charges, after the traffic was moved to PSE). We do not speculate whether the traffic ever would have been moved back or whether it or some other development would have satisfied

CCI's CSTP II commitments because AT&T did not move the traffic from CCI to PSE.

FOOTNOTE 51:

***See First District Court Opinion* at 5.** Exhibit G to the Petition, a letter agreement between CCI and PSE dated January 16, 1995, explains that, once the traffic was moved: (1) CCI's end-users (formerly the Inga Companies' end-users) would "**be billed by AT&T at the prevailing AT&T Tariff 2 CSTP rates, less twenty three percent (23%) Customer Specific Term Plan (CSTP) discount, and 5.5% Revenue Volume Pricing Plan (RVPP) discount**"; (2) CCI would get 80 percent "earned credit" for this traffic **from PSE**; (3) **CCI would continue to be responsible to AT&T for any commitment associated with the CSTP II Plans (which would not be discontinued);** and (4) PSE would assist in moving accounts back to CCI upon written notice from CCI that AT&T required **CCI to meet its commitments.** *See* Exhibit G to the Petition. Thus, the traffic would be discounted 66 percent instead of 28 percent and the end-users would receive a discount off AT&T's standard tariffed rates greater than the portion of the 28 percent they had received when their traffic was associated with the CSTP II plan. ***See First District Court Opinion* at 3-5**. The discount differential would be apportioned between CCI and PSE according to their letter agreement. *See also* n.**Error! Bookmark not defined.**, *infra*.

The above section 2.1.8 tariff analysis under the 2.1.8 heading references and agrees with the non vacated First District Court Decision **and both utilized section 2.1.8 to interpret the obligations allocation. This complete tariff interpretation by the FCC was done under 2.1.8 and had absolutely nothing to do about the fraudulent use provision.** The above FCC section 2.1.8 tariff analysis shows that "once the traffic was moved" to PSE the end-users transferred would get PSE's 28% (CSTP 23% plus 5% RVPP) discount pool which obviously means it absorbs the bad debt. This obviously confirms that just the account obligations transfer, because in fact only accounts did transfer!

The FCC correctly interpreted that CCI' plans revenue commitments with their associated shortfall and termination obligations must stay with the transferring plan holder CCI. The FCC's decision (under the heading 2.1.8--- not the fraudulent use heading), clearly interpreted that the plans revenue commitments **do not transfer**!

The following Shows How Judge Bassler Made his Error

Look at this next FCC decision excerpt which does fall under the Fraudulent

Use Heading **but here is the key----it references the use of tariff section 2.1.8.**

FCC 2003 Decision Page 8 para 11 Under Fraudulent Use Section:

> Based upon our review of AT&T's tariff, we conclude that, even assuming that AT&T reasonably suspected a violation of the "fraudulent use" provisions of its tariff – which we do not decide – those provisions did not authorize AT&T to refuse to move the traffic from CCI to PSE. If AT&T had moved the traffic from CCI to PSE, then all of the traffic that CCI had used to meet its CSTP II/RVPP commitments would be associated with PSE's CT 516. **Further, CCI (as well as the Inga companies) [FOOTNOTE 62] but not PSE, would continue to have been responsible for any shortfall obligations under the CSTP II/RVPP plans.** Once all of its traffic was moved to PSE, CCI might have needed to amass new traffic in order to meet its commitments under its CSTP II plans. **AT&T's apparent speculation that CCI would fail to meet these commitments and would be judgment-proof did not justify its refusal to transfer the traffic in question.**
> **FOOTNOTE 62:**
> ***See First District Court Opinion*** **at 9.**

The FCC under the Fraudulent use section was simply correctly making the point to AT&T that its fraudulent use claim was a farce because under **section 2.1.8's** joint and several liability provision **CCI AS WELL AS THE INGA COMPANIES** would be obligated for the actual shortfall. AT&T was claiming that CCI was an asset less shell and therefore was attempting to enact its Fraudulent Use provisions; however the FCC was simply stating that AT&T also had the Inga Companies to pursue for shortfall. This is why the FCC correctly chose to further explain 2.1.8's obligations allocation under Fraudulent Use. It makes perfect sense.
Furthermore look at the sentence:

> Further, CCI (as well as the Inga companies) **[FOOTNOTE 62]** but not PSE, would continue to have been responsible for any shortfall obligations under the CSTP II/RVPP plans.

See what it the footnote references:

> FOOTNOTE 62:
> *See First District Court Opinion* at 9.

The FCC was in agreement with Judge Politan's non vacated Decision which interpreted the obligations allocation **under 2.1.8's obligations language.** The fact that the FCC added further 2.1.8 obligations analysis under the fraudulent use heading is appropriate to those who understand the joint and several liability provision of 2.1.8.

The FCC under the Fraudulent Use heading was simply reiterating what it had already interpreted under the heading 2.1.8 within the FCC decision. The FCC Decision was simply making the point that revenue commitments/S&T obligations **do not transfer on traffic only transfers** but AT&T still could pursue both CCI and the Inga Companies. By AT&T making a claim for fraudulent use because it "believed" that it was going to be deprived of shortfall on CCI's plans, AT&T was also simultaneously confirming, as was the FCC, that it understood that S&T obligations do not transfer on traffic only transfers.

The FCC Decision obviously was confirming that S&T obligations stay with CCI, and the fact that part of its 2.1.8 obligations allocation analysis was under the heading interpreting AT&T's bogus Fraudulent Use claim but referencing and agreeing with Judge Politan's 2.1.8 analysis is perfectly understandable, and in no way diminishes its correct interpretation.

In fact it actually enforces the FCC decision regarding the allocation of obligations because it confirms that the FCC fully understood that for AT&T to make a fraudulent use claim it also had to acknowledge that the S&T obligations did not transfer on traffic only transfers. If the tariff did not allow traffic only transfers in which the S&T obligations stayed with the transferor, AT&T would not have instituted its bogus fraudulent use claim; AT&T would have simply argued that its tariff does not permit S&T obligations to remain with the transferors plan on a traffic only transfer.

Therefore the FCC has obviously already interpreted under section 2.1.8 which obligations transfer.

Judge Bassler's error becomes even more apparent when you consider that there are is no obligation transfer language within AT&T's fraudulent use provision 2.2.4.therefore the only obligations language is within section 2.1.8.

Judge Bassler's confusion and also the DC Circuits was that although the FCC used 3.3.1.Q bullet 4 to determine the method in which account traffic could be transferred—the FCC used the obligations language within section 2.1.8 to interpret and determine which obligations transfer. Moreover, section 3.3.1 Q bullet 4 also does not contain any obligations transfer language. The FCC had to use section 2.1.8, as it is the only obligations transfer language in the tariff.

When the DC Circuit answered Judge Politan's referral on "whether or not traffic only could transfer" the case was over due to the **obligations language issue having already been decided by both the non vacated District Court, then not changed by the FCC, and not changed by the DC Circuit.** It became: **The Law of the Case.**

The Law of the Case designates that if an appellate court has not decided a legal question and case goes to a lower court (FCC) for further proceedings, **the legal question, not determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain the same.** Allen v. Michigan Bell Tel. Co., 232 N.W.2d 302, 303.

The Law of The Case also provides that an appellate court's determination on a legal issue is binding on both the trial court and FCC **and an appellate court on a subsequent appeal** given the same case and substantially the same facts. Hinds v. McNair, 413 N.E.2d 586, 607.

The facts are exactly the same as it relates to the FCC's use of section 2.1.8 to interpret and determine the proper allocation of obligations. The only DC Circuit change is in reference to how accounts could transfer (using 2.1.8 instead of 3.3.1.Q bullet 4), and since the FCC did not appeal the DC Circuit because the FCC saw where it went wrong on the "how to" side of the equation, that did not diminish or effect the FCC's proper interpretation of the obligations allocation question.

The FCC having already agreed with the non vacated May 1995 District Court Decision on its obligations allocation analysis and the DC Circuit not having decided the obligations issue has under the Law of the Case decided the only remaining DC Circuit issue and the same one that Judge Bassler's District Court referred.

When the DC Circuit correctly determined that 2.1.8 does allow traffic only transfers as well as entire plan transfers the totality of petitioners 2.1.8 traffic only transfer was answered in petitioners favor. By law the case, the case is over and petitioners prevail.

For:

800 Discounts, Inc.
Winback & Conserve Program. Inc,
Group Discounts, Inc.,
One Stop Financial, Inc

Its president

/s/ Al Inga